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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Applicant:
Paul Pazandak

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Atty. Dkt No.: OBJS:002

Filed: 2/9/1999

Group Art Unit: 2176

Serial No.: 09/247,209

For: "Type Specific Objects from Markup
and Web-Oriented Languages and
Systems And Methods Therefor"

Examiner: Joseph H. Feild

APPELLANT'S APPEAL BRIEF

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Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This brief is in furtherance of the Notice of Appeal, filed in this case on January 15, 2004.

The Applicant respectfully requests the Board of Patent Appeals and Interferences to reverse the final rejection of Claim 3 under 35 U.S.C. §103. The present invention is not anticipated and also not obvious in view of the prior art relied upon by the Examiner.

THE REAL PARTY IN INTEREST

Object Services and Consulting, Inc. of Baltimore, Maryland is the real party in interest.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

The Applicant's legal representative is H. Dale Langley, Jr. The firm address and telephone number are:

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STATUS OF CLAIMS

Claim 3 is pending in the application, has been rejected, and is hereby appealed.

STATUS OF AMENDMENTS

None of the claims have been amended after Final Rejection. Applicant filed an amendment in reply to the Final Rejection, however, the Examiner refused to enter the amendment.

SUMMARY OF INVENTION

The present invention is succinctly identified in Claim 3, as previously amended, of the application, as follows:

3. (previously amended) A method of parsing an XML document, comprising the steps of:

acquiring the XML document via a computer;

associating the XML document with a call via the computer;

calling a code, via the computer, that operates on XML of the XML document;

and

creating, via the computer, a type specific object from the XML document from the code.

Briefly, the present invention, as described in the Claim, a method of parsing an XML document. Conventionally, parsing of XML documents has required an indirect parse operation, in which a "parse tree" is created from the XML document and, then, the parse tree is subjected to a parsing operation. Such a parse tree requires that selected data from the XML document be retrieved and compiled in an outline format (i.e., the parse tree). In creating this parse tree, an additional program(s) for retrieving and compiling the parse tree from the XML document is

required. Alternatively or additionally, human intervention can be required to manually retrieve and compile the selected data from the XML document. Applicant's invention, on the other hand, dispenses with the need for additional program(s) and/or manual intervention for parse of an XML document.

In Applicant's invention, as described in the Claim, the XML document is associated with calls during coding of the XML document. Each call, itself, calls a code. This code then creates a type specific object corresponding to the respective call, code and XML document data. Thus, there is not any requirement of retrieval and compilation in an outline form, as creation of the parse tree for parse operations. Instead, the parse is automatically performed via the calls, codes, and type specific object creation thereby.

ISSUE FOR REVIEW

Whether claim 3 is patentable under 35 U.S.C. §103 over Davidson et al, U.S. Patent No. 6,083,276.

GROUPING OF THE CLAIMS

The sole claim remaining pending for consideration on this appeal is independent Claim 3.

ARGUMENT

Applicant's claimed invention is patentable under 35 U.S.C. section 103 over Davidson. The Examiner contends that "while Davidson does not explicitly employ the language 'associating... with a call', 'calling a code', and 'creating a type specific object... because of the code', it nonetheless would have been obvious based on Davidson.

The Examiner is using hindsight and does not have grounds from within Davidson (or otherwise) for the rejection. Although Davidson, admittedly, discloses "transformation of the parse tree into components *corresponding to instances of classes* in an application framework"

(Office Action, p. 4, responsive to Applicant's arguments of June 27, 2003), this statement by the Examiner exemplifies the particular distinction between Applicant's claimed invention and the disclosure in Davidson – particularly, that Davidson specifically addresses only creation of a parse tree when parsing an XML document. Applicant's claimed invention specifically describes an entirely different method and system of parsing an XML document, that does not involve any parse tree creation.

Davidson neither teaches or suggests any alternative to creation of a parse tree. Applicant's claim 3 particularly identifies parsing without any parse tree creation.

The United States Supreme Court, in Graham v. John Deere, set forth a three-part test for *prima facie* obviousness:

- (1) The scope and content of prior art to be determined;
- (2) Differences between the prior art and the claims at issue are to be ascertained; and
- (3) The level of ordinary skill in the pertinent art resolved.

Against this background, the obviousness or non-obviousness of the subject matter is determined.

(1) The Scope and Content of Prior Art

The Examiner has relied on Davidson as the sole reference. Davidson is directed to, and teaches and suggests, a parse expressly requiring creation of a parse tree. Only through hind sight and the Examiner's unsupported contention, can Davidson be considered as showing anything different.

(2) Differences Between the Prior Art and the Claims at Issue

There are significant advantages to Applicant's simplified parse system and method. Particularly, the parse is automatically possible because of the calls, codes, and type specific object creation, without intermittent steps of retrieving data and creating a parse tree. Applicant's invention is a simplified, more straightforward approach, that obtains results without

additional intervention or manual effort. This is a significant and patentable advantage and invention, in comparison to Davidson's conventional parsing through creation of a parse tree.

(3) The Level of Ordinary Skill in the Pertinent Art

The Examiner's position is essentially summarized in the final office action. The Examiner presupposes and presumes that Davidson's reference to a "component corresponding to an instance of a class", means or implicates that there is no parse tree in Davidson and that Davidson knows, teaches or suggests the particular invention claimed by Applicant. This is quite a stretch, particularly where, as stated by the Examiner, the reference to "instance of a class" in Davidson related expressly to a "parse tree". The rejection is not supported, and Davidson can not be considered as teaching or suggesting Applicant's claimed invention.

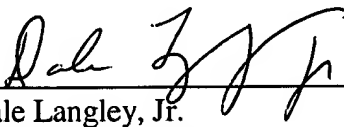
Conclusion

Accordingly, Applicant respectfully submits that Applicant's claim 3 would not have been obvious to a person of ordinary skill in the art at the time the invention was made. Applicant therefore requests that the Board overturn the rejection of claim 3 over Davidson, and that this claim be allowed and the patent passed to issue.

July 15, 2004
Date

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Respectfully submitted,



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APPENDIX A
APPLICATION CLAIMS

3. A method of parsing an XML document, comprising the steps of:
- acquiring the XML document via a computer;
 - associating the XML document with a call via the computer;
 - calling a code, via the computer, that operates on XML of the XML document;
- and
- creating, via the computer, a type specific object from the XML document from the code.